



ATLANTA

CINCINNATI

COLUMBUS

NEW YORK

CHICAGO

CLEVELAND

DAYTON

WASHINGTON, D.C.

APPLICATION GRANTED

SO ORDERED 

VERNON S. BRODERICK

U.S.D.J. 01/06/2022

January 4, 2022

VIA ECF

Hon. Vernon S. Broderick
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 415
New York, New York 10007

Defendants are directed to Rule 5.B. of my Individual Rules & Practices in Civil Cases and to meet and confer with Plaintiff as necessary to determine if the Sur-reply in Opposition to Plaintiff's Motion for Preliminary Injunction and supporting materials can be filed in redacted form on ECF.

Re: *Spectrum Dynamics Medical Limited v. General Electric Company, et al.*,
Case No.: 18-cv-11386 (VSB)

Dear Judge Broderick:

We represent Defendants in the above-referenced action. We write pursuant to Rule 5.B of Your Honor's Individual Practices in Civil Cases to respectfully request permission to file under seal Defendants' Sur-reply in Opposition to Plaintiff's Motion for Preliminary Injunction, the Declaration of Marla R. Butler in Support of Sur-reply in Opposition to Plaintiff's Motion for Preliminary Injunction, and Exhibits 442 to 449, which are being filed today, January 4, 2022, and contain information the parties have designated Highly Confidential or Confidential under the parties' Stipulated Confidentiality and Protective Order (the "Protective Order") (Dkt. 156).

The presumption of public access to judicial documents can be overcome if countervailing factors warrant confidentiality. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *see also Nixon v. Warner Commc'ns Inc.*, 435 U.S. 589, 598 (1978). Sealing of records may be justified to preserve "higher values," including the need to protect an entity from competitive injury. *Lugosch*, 435 F.3d at 124; *see also Tropical Sails Corp. v. Yext, Inc.*, No. 14-cv-7582, 2016 U.S. Dist. LEXIS 49029, at *10-11 (S.D.N.Y. Apr. 12) (risk of "competitive injury is sufficiently serious to warrant protection" of proprietary business information). Consistent with this, courts routinely permit sealing and redaction of competitively sensitive proprietary business information or information subject to a claim of privilege. *See, e.g., Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015); *Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.*, 26 F. Supp. 2d 606, 614 (S.D.N.Y. 1998); *see also Nixon*, 435 U.S. at 598 (recognizing need to seal information that might "harm a litigant's competitive standing").

Here, Defendants' Sur-reply, supporting declaration, and exhibits contain references to information that is assertedly competitively sensitive and proprietary information of one or both parties and, if disclosed, could pose a substantial risk of harm. This is the sort of sensitive information that courts consistently protect from disclosure. *See, e.g., Ferring B.V. v. Allergan, Inc.*, No. 12-cv-2650, 2017 U.S. Dist. LEXIS 150239, at *16 (S.D.N.Y. Sep. 7) (sealing documents containing proprietary information); *Encyclopedia Brown*, 26 F. Supp. 2d at 612 (sealing documents reflecting sensitive trade secret information).

Marla.Butler@ThompsonHine.com Fax: 404.541.2905 Phone: 404.407.3680

THOMPSON HINE LLP
ATTORNEYS AT LAW

Two Alliance Center
3560 Lenox Road, Suite 1600
Atlanta, Georgia 30326-4266

www.ThompsonHine.com
Phone: 404.541.2900
Fax: 404.541.2905



Page 2

For these reasons, Defendants respectfully request permission to file under seal Defendants' Sur-reply in Opposition to Plaintiff's Motion for Preliminary Injunction, the Declaration of Marla R. Butler in Support of Sur-reply in Opposition to Plaintiff's Motion for Preliminary Injunction, and Exhibits 442 to 449.

Very truly yours,

/s/ Marla R. Butler

THOMPSON HINE LLP

Marla R. Butler

Carl Wesolowski (*pro hac vice*)

Two Alliance Center

3560 Lenox Road NE, Suite 1600

Atlanta, Georgia 30326

Tel.: (404) 541-2900

Fax: (404) 541-2905

Marla.Butler@ThompsonHine.com

Carl.Wesolowski@ThompsonHine.com

Jesse Jenike-Godshalk (*pro hac vice*)

312 Walnut Street, Suite 2000

Cincinnati, Ohio 45202

Tel.: (513) 352-6700

Fax: (513) 241-4771

Jesse.Godshalk@ThompsonHine.com

Brian Lanciault

335 Madison Avenue, 12th Floor

New York, New York 10017

Tel.: (212) 344-5680

Fax: (212) 344-6101

Brian.Lanciault@ThompsonHine.com

Jeffrey Metzcar

Discovery Place

10050 Innovation Drive

Miamisburg, Ohio 45342

Tel. (937) 443-6841

Fax (937) 430-3781

Jeff.Metzcar@thompsonhine.com

Attorneys for Defendants

General Electric Company, GE Healthcare,

Inc., GE Medical Systems Israel Ltd., Jean-

Paul Bouhnik, Sergio Steinfeld,

Arie Escho, and Nathan Hermony and for Non-

Party Yaron Hefetz

cc: All Counsel of Record via ECF